

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

WOODROW FLEMMING,

Plaintiff,

-v-

9:14-CV-0316
(DNH/DEP)

MATTHEW J. KING; DAVID BILOW,

Defendants.

APPEARANCES:

WOODROW FLEMMING
Plaintiff pro se
P.O. Box 146
New York, NY 10039

HON. ERIC T. SCHNEIDERMAN
Attorney General for the State of New York
The Capital
Albany, NY 12224-0341

DAVID N. HURD
United States District Judge

OF COUNSEL:

ORIANNA CARRAVETTA, ESQ.
Assistant Attorney General

DECISION and ORDER

Pro se plaintiff Woodrow Flemming brought this civil rights action pursuant to 42 U.S.C. § 1983. On June 20, 2016, the Honorable Christian F. Hummel, United States Magistrate Judge, advised by Report-Recommendation that defendants' motion for summary judgment be granted in part and denied in part. See ECF No. 37. Defendants have filed timely objections and plaintiff has filed a response. See ECF Nos. 39, 40.

Based upon a de novo review of the Report-Recommendation, the Report-Recommendation is accepted in whole. See 28 U.S.C. § 636(b)(1).

Therefore, it is ORDERED that:

1. Defendants Matthew J. King and David Bilow's motion for dismissal pursuant to Federal Rule of Civil Procedure 12(b)(6) (ECF No. 32) of plaintiff Woodrow Flemming's complaint (ECF No. 1) is:

(a) **GRANTED** as to the Eighth Amendment excessive force claims against defendants King and Bilow; and

(b) **DENIED** as to the First Amendment retaliation claims against defendants King and Bilow; and

2. The Clerk serve a copy of this Decision and Order upon plaintiff in accordance with the Local Rules.

IT IS SO ORDERED.



United States District Judge

Dated: September 21, 2016
Utica, New York